

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America)
) Cr. No. 3:00-626
vs.) C.A. No. 3:06-156-HMH
)
Brian Peter Zater,)
) **OPINION & ORDER**
Movant.)

This matter is before the court on Brian Peter Zater's ("Zater") request for a certificate of appealability. Zater filed a 28 U.S.C. § 2255 motion on January 11, 2006. On January 20, 2006, the court dismissed Zater's § 2255 motion. For the reasons stated below, the court denies Zater's request for a certificate of appealability.

An appeal may not be taken from a final order in a § 2255 proceeding unless a circuit justice or a circuit or district judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1)(B) (West Supp. 2005); Fed. R. App. P. 22(b). The movant must make a "substantial showing of the denial of a constitutional right" for the court to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2); Murphy v. Netherland, 116 F.3d 97, 99 (4th Cir. 1997). To obtain a certificate of appealability under § 2253(c), a § 2255 movant "must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotation marks omitted). If the court denies a motion for a certificate of appealability, the court must state its reasons for not issuing it. See Fed. R. App. P. 22(b)(1).

Zater's claims are not debatable and could not be resolved in a different manner. Further, the issues presented are inadequate, and Zater does not deserve encouragement to proceed further. Accordingly, the court declines to issue a certificate of appealability.

Therefore, it is

ORDERED that Zater's request for a certificate of appealability is denied.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
February 7, 2006

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.